



UNITED STATES DEPARTMENT OF COMMERCE
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09/077,572

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/077,572	10/13/98	APICELLA	M 875001US2

HM12/0804
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EXAMINER	
DEVI, S	
ART UNIT	PAPER NUMBER
164545	23

DATE MAILED: 08/04/00

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☐ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run _____ or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☐ Applicant's response to the final rejection, filed 07.12.00, has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☒ They raise the issue of new matter. (See Note).
- d. ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The new limitation of htrB mutant "pathogen" introduced to claims 22 and 23 introduce new matter requiring a new rejection. Newly added claims 44 and 45 contain limitations that raise new issues and require further consideration and search.

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing of appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: None.

Claims objected to: None.

Claims rejected: 22-26 and 29-31.

However,

☐ Applicant's response has overcome the following rejection(s): _____

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because _____

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☒ Other Interview Summary (paper no. 22).

L. F. Smith
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